

In re ) Fair Hearing No. 15,217  
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Appeal of )

The petitioner appeals a decision by the Department of Social Welfare establishing an overpayment of Food Stamps based on an administrative error made by the Department.<sup>1</sup> The issue is whether the Department can assess lower than a 10 percent recoupment amount when the recipient is not at fault for the overpayment.

1. The petitioner has been a Food Stamp recipient at all times pertinent to this appeal. The petitioner's son, a high school student, was employed from January through June, 1997; and the Department now concedes that through its own administrative error this information was not considered in determining the petitioner's Food Stamps during this period.<sup>2</sup>

2. After ascertaining this information the Department

<sup>1</sup>Initially, the Department determined that the overpayment was caused by the petitioner's inadvertent error in not reporting her son's earnings in a timely manner. After the petitioner filed her request for hearing the Department amended its decision to one of administrative error.

<sup>2</sup>In January, 1997, a change in the Food Stamp regulations became effective whereby earnings by high school students, which were previously exempt, were counted as income to the household.

determined that the petitioner was overpaid Food Stamps from March through June, 1997, in the amount of \$262. The petitioner does not dispute this amount.

3. The Department seeks to recoup this overpayment by reducing the petitioner's ongoing monthly Food Stamps by 10 percent.

ORDER

The decision of the Department is affirmed.

REASONS

Under the Food Stamp regulations, the Department is required to "establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive." F.S.M. § 273.18(a). "A claim shall be handled as an administrative error claim if the over issuance was caused by State agency action or failure to take action..." F.S.M. § 273.18(a)(2). A state agency is required to "take action to establish a claim against any household that received an over issuance due to an...administrative error if . . . [a] state agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment . . ." so long as not more than twelve months have elapsed between the month the over issuance occurred and the month the state agency discovered the error. F.S.M. § 273.18(b)(2)(ii). If administrative error

occurred, the size of the Department's claim must equal the difference between what the household should have received and what the household was actually allotted. F.S.M. § 273.18(c)(1)(ii).

State agencies are required to initiate collection actions against all households who were overpaid due to administrative error unless it is a non-fraud claim of less than \$35. F.S.M. § 273.18(d)(1)(i)(A). If the client is continuing to receive Food Stamps, the recoupment is the greater of 10 percent of the household's monthly allotment or \$10 per month. F.S.M. § 273.18(g)(4)(ii).<sup>3</sup> There is no provision in the regulations allowing the Department the discretion to recoup overpayments at any rate less than 10 percent.

Inasmuch as the above regulations require that the Department, in spite of its own administrative error, collect any amounts for which the petitioner was not qualified through a 10 percent reduction in the petitioner's ongoing Food Stamps, the Department's decision in this matter must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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<sup>3</sup>Until recent changes in Federal law, overpayments caused by the Department's administrative error could not be recouped involuntarily from a household's ongoing Food Stamps.